

UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF NEW YORK
(at Manhattan)

[18 USC §§ 242, 1951, 1962, 666][49 USC §§ 104(b)(1)&(c)(1), 106(f)(1), 40101(d)(4), 47504(a)(2)(E), 48103(a)][12 USC §§ 1701 et seq., 40117(a)(3)(E), 47141(c)(1)(A)&(B), 47504(a)(2)(D)&(E), 48103(a)][23 USC §§ 107(a)(1), 109(f),(h)(1),&(j), 401][40 USC § 3114][42 USC §§ 1715u, 1710][23 USC §§ 107(a)(1), 109(f),(h)(1),&(j), 401][40 USC § 3114][42 USC §§ 3535(d), 3601, 4621(c)(4), 4651(3) "just compensation", 4653(2) preexisting recorded mortgage, 7401, 7407(d), 7505a, 7571][Fed. R. Civ. P., Rules 7(b), 60(b), 71.1][Article IV, "Privileges and Immunities Clause", the 1st AM. "Petition Clause", the 5th AM. "Taking & Due Process Clauses", with 14th AM. "Equal Protection & Due Process Clauses", of U.S. Const.]

In Re: Residential Capital, LLC., et al., And,) Case No. 12-bk-12020 (MG)
In Re: GMAC, Mortgage Co., et al,) Chapter (Ch.11, Joint Admin.)
Debtors) (Related BR Case No.07-bk-57237, S.D., OHIO)
) (Related BR Case No. 12-bk-12032, S.D., N.Y.)
) JUDGE: GLENN, MARTIN
UNITED STATES of America, Ex Rel.,)
Yvonne D. Lewis, et al.,) Adversary Case No.: 12-01731
Plaintiffs/ Surplus Creditors) (Related Case No.1:12-cv-361, USDC, DC.);
Vs.) 05-CV-7346 (03-CV-7478); 03-CV-10836;
) 98-CV-3445, 05-CV-4555; 03-CV-6954;
GMAC, Mortgage Co., et al,) 12-AP-506, 11-AP-875, COA10th Dist., OHIO;
Defendants/ Bankrupt Debtor,) (Related Case No.96-cv-494, USDC, S.D.,OH.)

MOTION TO VACATE ORDER OF DISMISSAL ON FEB. 4, 2000 THAT AWARDED
POSSESSION OF "NAVIGABLE AIRSPACE"¹ OVER CONDEMNEE'S PROPERTIES IN
CASE NO. 98-CV-3445 [40 USC § 3114; 49 USC §§ 40101(d)(4), 47504(a)(2)(E)];

And,

DECLARATION OF TAKING IN CASE NO. 12-bk-12020 PURSUANT TO 40 U.S.C.A. §
3114 GROUNDED ON EXECUTIVE ORDER 11738 [38 FR 25161] FOR EPA & DOT
REGULATORY TAKINGS OF UNCOMPENSATED "AVIATION EASEMENTS 42 USC
§§7571(c)" [14 CFR §§ 34.3, 150 et seq., 158.7; 40 CFR §§ 87.6; 23 CFR §§ 24.102(l)², 771].

¹ 49 USCS § 40101(d)(4) Safety Considerations in Public Interest reads in pertinent parts:
"***, the Administrator shall consider the following matters, [inter alia], as being in the public
interest: controlling the use of the NAVIGABLE AIRSPACE and regulating civil
***operations in that airspace in the interest of the safety and efficiency ***.";

² 23 CFR § 24.102(l) reads: ("Inverse condemnation. If the Agency intends to acquire any
interest in real property by exercise of the power of **eminent domain**, it shall institute formal
condemnation proceedings and not intentionally make it necessary for the owner to institute
legal proceedings to prove the fact of the taking of the real property").

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of AMERICA, et al.,
Plaintiffs,
Vs.
Bank of AMERICA (BOA), et al.,
Defendants.

)
) Case: 1:12-cv-00361³
) (Related Dist. Ct. Case No. 1:12-cv-00363;
) No.2:96-cv-494, USDC, S.D., OH.;
) No.2:06-cv-312, USDC, S.D., OH.;
)
) Assigned To: Rosemary M. Collyer, Judge
)
)

FRIENDS OF THE EARTH, et al.,
Plaintiffs,
Vs.
UNITED STATES E.P.A. and
LISA JACKSON, Administrator,
Defendants.

)
) Case: 1:12-cv-00363
) (Related Dist. Ct. Case no.1:12-cv-00361);
)
) Assigned To: Jackson, Amy Berman, Judge
)
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UNITED STATES OF AMERICA BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

FEDERAL DEPOSIT INSURANCE CORPORATION WASHINGTON, D.C.

In the Matter of : FRB Docket No. 11-020-B-HC
ALLY FINANCIAL INC. : 11-020-B-DEO
Detroit, Michigan : FDIC-11-123b
:
ALLY BANK : (Related No.07-bk-57237, USDC, S.D., OH.,
Midvale, Utah : at Doc. 108, pg. 4 of 4, at items 2 & 3)
:
RESIDENTIAL CAPITAL, LLC : (Related Case No.1:12-cv-361, USDC, DC.);

³ "United States v. Summerlin, 310 U.S. 414, 416, 84 L. Ed. 1283, 60 S. Ct. 1019, 1940-2 C.B. 435 (1940) ("It is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights"); Utah Power & Light Co. v. United States, 243 U.S. 389, 409, 61 L. Ed. 791, 37 S. Ct. 387 (1917)" (See: Alaska Dep't of Env'tl. Conservation v. EPA, 540 U.S. 461, 514 (U.S. 2004))

1 Minneapolis, Minnesota

2 and

4 GMAC MORTGAGE, LLC

5 Fort Washington, Pennsylvania

: (Related Case No. 01-cv-1236, Id., M.D., FL.);
: (Related Case No. 96-cv-494, Id., S. D., OH.);
: (Related Case # 05-CV-122, Id., W. D., KY.);
: (Related Case No. 08-cv-75, Id., S. D., OH.);
: (Related Case # 01-CV-259, Id., W. D., KY.);
: (Related Case No. 10-cv-87, Id., S. D., IA.);
: (Related Case No. 06-cv-312, Id., S. D., OH.);

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE SOUTHERN DISTRICT OF NEW YORK**
8 **(at Manhattan)**

9 UNITED STATES OF AMERICA, ex rel.,

10 EDWARD O'DONNELL, et al.,

11 appearing QUI TAM,
12 Plaintiff /Relator,

13 Vs.

14 BANK OF AMERICA CORP., et al,
15 Defendants.

) Case No.: 12-cv-1422
) (Related Case No.1:12-cv-361, USDC, D.C.;
) Related Case No.96-cv-494, USDC, S.D.,OH;
) 05-CV-7346 (03-CV-7478); 03-CV-10836;
) 05-CV-4555; 03-CV-6954);(04-AP-469, 04-AP-
) 1135; 04-AP-1347; 11-AP-1132; 12-AP-506;
) 10-AP-110, COA10th Dist., OH.; (Related
) Case Nos.08-cv-75, 06-cv-312,USDC, S.D.,OH)

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17 **UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF**
18 **OHIO;**
19 **(at Columbus)**

20 In Re: SIDNEY T. LEWIS, pro se,

21 Debtor

22 Social Security No.: xxx-xx-5959

) Case No. 2:07-bk-57237
) (Ch.7)
) (Related Bankr Case No. 2:05-bk-75111)
) (Related Case No.1:12-cv-361, USDC, D.C.)
) JUDGE: HOFFMAN, JOHN, Jr.

24 In Re: Yvonne D. Lewis,

26 Debtor

27 Social Security No.: xxx-xx-2390

) Case No. 2:05-bk-75111
) (Ch.7)
) (Related Case No. 2:07-bk-57237)
) (Related BR Case No. 12-bk-12020, S.D., N.Y.)
) JUDGE: HOFFMAN, JOHN, Jr.

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29 **IN THE UNITED STATES DISTRICT COURT, S. D. OF OHIO**
30 **EASTERN DIVISION (at Columbus)**

31 UNITED STATES of America, Ex Rel.,)

32 Sidney T. Lewis, et al.,)

Plaintiffs

) Action No. 2:08-cv-1042
) (Related Dist. Ct. Cases 2:08-cv-16; 2:96-cv-494;

1 Vs.) 2:09-cv-179, 2:08-cv-75; 09-cv-936; 09-cv-944;)
2) 2:06-cv-312; 08-cv-1040 and 08-cv-736);

3 Larry McClatchey, et al., of the)
4 Kegler, Brown, Hill & Ritter Lawfirm) JUDGE: HOLSCHUH
5 Defendants.) Magistrate Judge: KING

6 The Huntington National Bank, et al.,) Civil Action No. 2:08-cv-00073
7 Plaintiffs) (Related Case No.08-cv-75, at Doc. 14-4, pg.4,
8 v.) P.3; No. 96-cv-494, at Doc. 70; No. 08-cv-1040,
9) at Doc. 2-4, pgs.13 & 18 at P.3 [No.05-JG-6455]);

10 Yvonne D. Lewis, et al.,) JUDGE GRAHAM
11 Defendants.) Magistrate Judge: ABEL

12 Sidney T. Lewis, et al.,) Action No. 2:08-cv-1040
13 Plaintiffs,) (Related Dist. Ct. Cases 2:08-cv-73; 2:96-cv-494;
14 Vs.) 2:09-cv-179, 2:08-cv-75; 09-cv-936; 09-cv-944;)
15) 2:06-cv-312; 08-cv-1042 and 08-cv-736);

16 James Johnston, et al., involving)
17 Countrywide Home Loans.) JUDGE: HOLSCHUH
18 Defendants.) Magistrate Judge: TERENCE P KEMP

19 **FRANKLIN COUNTY COMMON PLEAS COURT, OHIO**
20 **CIVIL DIVISION (at Columbus)**

21 Sidney Lewis, et al. (FHA program)) Case No. 98-CV-3445
22 Plaintiff(s))

23 Vs.) Judge: ALAN TRAVIS

24 City of Columbus, Dept. of Dev., Utltes &)
25 Aviation Div. (FAA/ DOT, program))

26 GMAC Mrtg. Co., LLC, (FAA, program)) Case No. 05-CV-4555
27 Plaintiff(s))

28 Vs.) Judge: JULIE LYNCH

29 Yvonne D. Lewis, et al. (FHA, program))
30 Defendant(s))

31 GMAC Mrtg. Co., LLC, (FAA, program))Case No. 03-CV-6954
32 Plaintiff(s))

33 Vs.) Judge: PATRICK SHEERAN

1 Sidney T. Lewis (HUD/FHA, program))
2 Defendant(s)

3 MOTION TO VACATE DISMISSAL ON FEB. 4, 2000 IN CASE NO. 98-CV-3445
4 [40 USC § 3114; 49 USC §§ 40101(d)(4), 47504(a)(2)(E)];

5 And,

6 DECLARATION OF UNCOMPENSATED REGULATORY TAKINGS IN CASE NO. 12-
7 bk-12020; 42 USC § 7571(c); 40 USC § 3114 [14 CFR §§ 34.3, 150 et seq., 158.7]

8 MOTION
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10 SIDNEY LEWIS and YVONNE D. LEWIS as plaintiffs/creditors/mortgagors, appearing as the
11 movants in the above-entitled state **Inverse condemnation** action for “*Regulatory Takings*”, 23
12 CFR § 24.102(l); 14 CFR §§ 34.3, 150 et seq., 158.7 in Ohio State CPC case no. 98-CV-3445,
13 moves all State and Federal Courts to vacate their respective court's Orders subsequent to the
14 “at issue” Order of DISMISSAL on **FEBRUARY 4, 2000** [*in the case of Lewis et al. (i.e.,*
15 *Argyle Park Subdivision “APS”) plaintiffs, vs. City of Columbus, (i.e., Columbus International*
16 *Airport Hub “CMH”) defendants*], which indirectly commanded plaintiffs to surrender
17 possession of their “at issue” uncompensated private aviation easements over the above-
18 referenced private “APS” properties. The Defendant City of Columbus [*as owner and*
19 *operator*], statutorily acquired said properties via Federal approval of “Land Use Controls” on
20 **JULY 28, 1987** under ASNA of 1979⁴ (See: **EXHIBIT 1**, FAA approval), on behalf of the
21 Administrator of the Federal Aviation Administration “FAA”, for the Secretary of the Dept. of
22 Transportation “DOT”, United States of America “US” [See: 23 USC § 401; 49 USC §§
23 104(c)(1), 106(f)(1)], without requiring advance payments before taking possession of “interest
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31 ⁴ ASNA of 1979 codified 49 USC §§ 47504(a)(2)(D) and (c)(2)(B) “to acquire residential
32 properties”.

1 in private lands” to collect a “public use tax” called a “passenger facility charge⁵” [See: 23
2 USC §107(a)(1); 23 CFR § 24.102(j); 14 CFR § 158.7] under the power of eminent domain
3 (see fnt.2) under the “Taking Clause” (See 5th & 14th Amend., of the U.S. Const.) or, in the
4 alternative, to issue an amended Order to Desist or Pay providing that APS Plaintiffs obligation
5 to surrender possession of their private properties be deferred until the court's determination of
6 Defendant City's right to take the aviation easement over said private properties in connection
7 with a July 28, 1987 approved US DOT/FAA Airport Improvement Grant no. 84-2-3-39-0025-
8 03-85 after an evidentiary hearing on that sole “*De facto Takings*”⁶ issue at a time and date
9 fixed by the Court in case no. 98-CV-3445.

10 (See: 49 USC §§ 48103(a), 46310(b); 14 CFR § 300.1-“Judicial standards of practice.”)

11 In support of the instant motion Plaintiffs/Creditors/FHA Mortgagors’ allege that:

- 12 1. Defendant City of Columbus (i.e. DOT) has no viable defense to this
13 Taking/Condemnation action pursuant to 23 CFR § 24.102(l) and 24 CFR § 203.605 as
14 shown in the succeeding paragraph, and defendant City has raised the defective defense
15 under 42 USC §7573 by filing on *May 28, 1998*, a timely Motion To Dismiss plaintiffs’
16 takings complaint in **Inverse condemnation**. (See: **EXHIBIT A**, pgs. 001-008)
- 17 2. Plaintiffs’ aver Federally Protected “Affirmative Defenses” (in case nos.05-CV-4555;
18 03-CV-6954; 03-CV-10836; 07-EVH-60047) to any/all attempted foreclosures of “at
19 issue” HUD/FHA insured mortgages in “APS” pursuant to 24 CFR §§ 203.500-605,
20 604(b) and “Takings Claim” pursuant to 23 CFR § 24.102(l); 5th & 14th Amend., of the

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30 ⁵ “PFC means a passenger facility charge covered by this part imposed by a public agency on
passengers enplaned at a commercial service airport it controls.” (See: 14 CFR § 158.3)

31 ⁶ “...noise levels, which is only one factor to be considered in a de facto taking determination.”
32 (See: *In re In re Harr*, 96 Pa. Commw. 306, 310-311 (Pa. Commw. Ct. 1986), citing *Allegheny County Appeal*, 63 Pa. Commonwealth Ct. 99, 102, 437 A.2d 795, 797 (1981).)

1 U.S. Const.; 49 USC § 48103(a), for the Taking actions in that the property(s) are not
2 being condemned strictly for a “public use” purpose; Although the complaint states the
3 property is being taken to implement “lead pollution emission” abatement “Overlay”
4 under a “Transportation Improvement Project, TIP” for Defendant City Ordinance Nos.
5 40-89 and 1533-93; The uncompensated private aviation easements over said private
6 property(s) are not susceptible to any leaded “automobile engine emission” use that
7 would implement those purposes, and Defendant City's real purpose is to avoid the
8 prospect of either having to make expensive payments to acquire Plaintiffs’ property(s)
9 for “lead av-gas pollution from aircraft and aircraft engine emissions” under the
10 aviation safety and noise abatement act pursuant to 23 CFR § 24.102(f)&(j); 5th & 14th
11 Amend., of the U.S. Const.; 49 USC §§ 48103(a), 47504(a)(2)(E).
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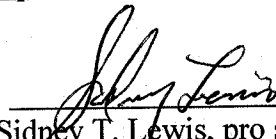
17 3. In undertaking to unlawfully acquire plaintiffs’ aviation easement which run with the
18 property, Defendant City and the Secretary of the DOT have acted arbitrarily, capriciously,
19 and in bad faith due to the fact that the DOT/FAA and Defendant City have taken
20 prohibited “**Coercive action**” from JULY 28, 1987 to JULY 18, 2013⁷ by deferring
21 negotiations and failing to make a timely deposit of funds with the court, as coercive action
22 in order to induce an agreement on the price to be paid for the property(s) (See 23 CFR §
23 24.102(h)).
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27 4. Attached to and made a part of this motion as **EXHIBIT A**, at pgs. 001-008, is the Motion
28 of Defendant City of Columbus corroborating and establishing in more detail the fraudulent
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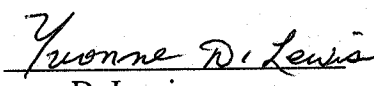
32 ⁷ Compare: Exhibit 1, at 002, **July 28, 1987**; With: 40 CFR § 87.6 as amended, eff. **July 18, 2012**)

concealment of operative facts in support of plaintiff's Taking allegations made in this
motion. (Compare: **EXHIBIT 1**, FAA approval: With: **EXHIBIT A**, Motion)

Dated: 08-07-13


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Dated: 08-07-13


Yvonne D. Lewis, pro se
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DECLARATION
[40 U.S.C.A. § 3114]

Pursuant to authority under 23 U.S.C.A. § 401; 42 U.S.C.A. § 7571(b)&(c) ANTHONY
FOXX, the Secretary of the Department of Transportation, as the official duly authorized to
take by acquisition in the name of and for a "public use" by the United States the interest in
real property being aviation easements over residential properties described below, make this
declaration of taking pursuant to 40 U.S.C.A. § 3114; 49 USC §§ 48103(a), 47504(a)(2)(E) and
(c)(2)(B); and 5th Amendment "Taking & Due Process Clauses", with 14th Amendment "Equal
Protection & Due Process Clauses", of United States Constitution declaring:

I.

Authority for the taking derives from the Act of Feb. 18, 1980, known as the **AVIATION
SAFETY AND NOISE ABATEMENT ACT of 1979**, Pub. L. 96-193, 94 Stat. 50 (See:
EXHIBIT 1, at 001-009), authorizing the Secretary of Transportation to acquire private
easements and residential property for the improvement of AIR COMMERCE AND SAFETY
for AIRPORT DEVELOPMENT and NOISE, 49 USC §§ 40117(a)(3)(E), 47504(a)(2)(E); the
act of Dec. 30, 1987, known as the Airport and Airway Safety and Capacity Expansion Act of
1987, Pub. L. 100-223, 101 Stat. 1486, the Act of Aug. 27, 1958 Pub. L. 85-767, as amended
in 2006, by Subsec. (a). Pub. L. 109-284 substituted conferring the same federal power over
property needed for implementation of ACQUISITION OF RIGHTS-OF-WAY as in the case
of an "overlay" for an aviation easement on private property needed for Highway

1 improvements, 23 U.S.C.A. § 107(a)(1); the 49 U.S.C.A. §§ 47115(b)(1), 47117(e)(1)(A)
2 which authorized the project for which the interest is being taken, the Act of AIRPORT AND
3 AIRWAY TRUST FUND AUTHORIZATIONS, which appropriated funds for the project and
4 the Act of Feb. 26, 1931, known as the Declaration of Taking Act, ch. 307, 46 Stat. 1421,
5 Pub.L.71-736, the general federal Takings statute, 40 U.S.C.A. § 3114; 49 U.S.C.A. § 48103.

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7 **II.**

8 The 1987 through July 18, 2013 “public use” for which the “APS” aviation easements (See:
9 **EXHIBIT 2**, at 010 to 015), and private property interests known as “PFC’s” (See: 49
10 U.S.C.A. § 40117), were taken in the accomplishment of mandates of the CLEAN AIR ACT
11 under Exec. Order 11738 and necessary private “Land Use Controls” for collection of “ad
12 valorem taxes” known as a “Public Use Charge” (See: 14 CFR § 158.3) in the State of Ohio, at
13 Columbus International Airport. (See: **EXHIBIT 1**, at 003 to 004, Land Use Planning),
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17 **III.**

18 A general description of the private residential aviation easements in the Argyle Park
19 Subdivision (lots 1 to 128) and real property the FR Winget’s Estate (lots 1 to 4) in which the
20 interest is being taken is set forth in Exhibit 2 (See: **EXHIBIT 2**, at 012), attached here and
21 made a part of this declaration, the property described being the same property described in the
22 takings complaint in case no. 98-CV-3445 and in the above-entitled cause(s). (See: **EXHIBIT**
23 **2**, at 007-009)
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28 **IV.**

29 The interest taken for the aforesaid “public use” is *land use controls on private aviation*
30 *easements* in the real property(s) described in **EXHIBIT 2** (See: **EXHIBIT 2**, at 012). The
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1 nature and character of the easement is described in Exhibit 1 (See: **EXHIBIT 1**), which is
2 attached here and made a part of this declaration.
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4 **V.**

5 A plan showing the property in which the land use control for noise exposure map "NEM"
6 requiring leaded air pollution emission abatements in private residential aviation easements and
7 lead contaminated soil is being taken is annexed here as EXHIBIT 1 (See: EXHIBIT 1, at 008-
8 009) and made a part of this declaration.
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11 **VI.**

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13 The sum estimated by me as just compensation for the taking of the private residential
14 subdivision aviation easements is in excess of **\$184,000,000.00** as just compensation for PFC's
15 taken (See: 76 FR 12407 at PFC Application no. 10-09-C-00-CMH at \$184,864,011), which
16 sum I have caused to be deposited herewith in the registry of the court for the use and benefit
17 of the persons entitled to compensation pursuant to the 1988 Exec. Order No. 12630 [see: 53
18 FR 8859] and the 1973 Exec. Order No. 11738 [see: 38 FR 25161] with respect to a Federal
19 Grant from DOT/FAA Airport Improvement Grant no. 84-2-3-39-0025-03-85. In my opinion
20 the prior FAA administration's failure to submit timely "**Takings Implications Assessments**"⁸
21 for "aircraft safety" (see: 77 FR 36379 at **JULY 18, 2012** citing *Secretary of Transportation*
22 "*DOT*", 49 USC §§ 46310(b), 44714) over FHA insured mortgaged properties already tainted
23 with lead-based paint hazards for abatement; then Exposed to additional the FAA's toxic leaded
24 av-gas air pollutants from aircraft and aircraft engine emissions near the Columbus Metro
25 Airport Hub ("CMH") [see: 53 FR 2800] in violation of the CLEAN AIR ACT 42 USC §§
26 7401, 7571; Id. § 46310(b), guided the maximum compensation ultimately awarded for the
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28 ⁸ "Pursuant to a 1988 Executive Order, executive agencies must analyze the takings
29 implications of certain actions and must report any significant findings to the Office of
30 Management and Budget: these reports are called "**Takings Implications Assessments**." See
31 Cong. Budget Office, Regulatory Takings and Proposals for Change 45 (1998) (discussing
32 Exec. Order No. 12630, 53 Fed. Reg. 8859 (1988)), available at
<http://www.cbo.gov/doc.cfm?index=1051&type=0&sequence=6>.) (see: **Res. Invs., Inc. v. United States**, 97 Fed. Cl. 545, 548, at fnt. 5, (Fed. Cl. 2011))

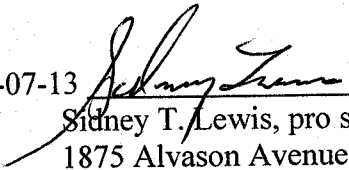
1 taking of the Argyle Park Subdivision Av-easements and FR Winget's Estate (lots 1 to 4)
2 which will be within any maximum price limit that may be set by law to be paid for the private
3 av-easements.

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5 "Section 3114 pertains specifically to declaration of taking actions. Subsection (a)
6 provides that the Government may file a declaration of taking to acquire an easement
7 or right of way in land. 40 U.S.C. § 3114(a)."

8 (See: United States v. 3.6 Acres of Land, 395 F. Supp. 2d 982, 987-988 (E.D. Wash. 2004),
9 citing Chandler v. United States, 372 F.2d 276, 278-79 (10th Cir. 1967) following United
10 States v. Hayes, 172 F.2d 677 (9th Cir. Or. 1949))

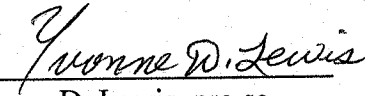
11 Dated: Retroactively executed July 28, 1987 on 08-07-13

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13 Dated: 08-07-13


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22 We, the Creditors, Sidney T. Lewis and Yvonne D. Lewis, certify that the "Motion/
23 Declaration/Supplement to Objections" were served by regular U.S. Mail (postage prepaid) on
24 08-07-13 on the following parties:

25
26 The Clerk of the Bankruptcy Court,
27 One Bowling Green,
28 New York, New York 10004-1408;

29 Chambers of the Honorable Martin Glenn, Judge
30 United States Bankruptcy Court for the Southern District of New York,
31 One Bowling Green,
32 New York, NY 10004

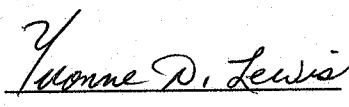
1 The Office of the United States Trustees, Southern District of New York,
2 Attn: Brian Masumoto and Michael Driscoll
3 U.S. Federal Office Building,
4 201 Varick Street, Suite 1006,
5 New York, New York 10014.

6 And by email to: lewis.kruger@gmacescap.com, glee@mofo.com, lmarinuzzi@mofo.com,
7 and tgoren@mofo.com; and email to: keckstein@kramerlevin.com,
8 dmannel@kramerlevin.com, and szide@kramerlevin.com; And by email to:
9 richard.cieri@kirkland.com and ray.schrock@kirkland.com;.

10
11 Dated: 08-07-13

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13 Sidney T. Lewis, pro se

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15 Dated: 08-07-13

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17 Yvonne D. Lewis, pro se
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20826 - I17

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cc: FLS

AUG 3 1987

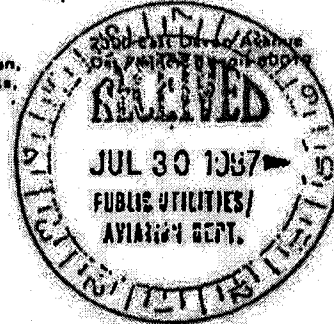
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U.S. Department
of Transportation
Federal Aviation
Administration

DIVISION OF AIRPORTS

Great Lakes Region
Illinois, Indiana, Michigan,
Minnesota, North Dakota,
Ohio, South Dakota,
Wisconsin



July 28, 1987

Mr. Michael D. Long, P.E.
Director, Public Utilities And Aviation
109 N. Front Street, 4th Floor
Columbus, Ohio 43215-2835

Dear Mr. Long:

This is to notify you that the Federal Aviation Administration (FAA) has evaluated your final submission of the noise exposure maps and supporting documentation transmitted by your letter of March 26, 1987, in accordance with section 103(a)(1) of the Aviation Safety and Noise Abatement Act of 1979 (ASNA), and has determined that they are in compliance with applicable requirements of 14 CFR Part 150. Further, we have determined that Noise Exposure Map - 1985 (1 of 2) and Noise Exposure Map - 1990 (2 of 2) as presented in the Part 150 Noise Compatibility Program for Port Columbus International Airport fulfill the requirements of the noise exposure maps and supporting documentation. FAA's determination that your noise exposure maps are in compliance is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of Federal Aviation Regulation (FAR) Part 150. Such determination does not constitute approval of your data, information or plans.

Should questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on your noise exposure maps, you should note that the FAA will not be involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's determination relative to your noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with you, the airport operator, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA relies on the certification by you, under 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.



To: Bureau of Transportation Statistics
- A Division of DOT -

002



U.S. Department
of Transportation
**Federal Aviation
Administration**

Memorandum

Subject: ACTION: FAR Part 150 Noise Compatibility Program,
Record of Decision; Port Columbus International
Airport, Columbus, Ohio

Date: SEP 11 1987

From: Director, AGL-1

**Reply to
Attn. of:** Lamberts:384-7387

To: Administrator

The city of Columbus, Public Utilities and Aviation Department, owner and operator of Port Columbus International Airport, has submitted noise exposure maps (NEM's) and a proposed noise compatibility program (NCP) to this office. The NEM's were previously accepted by FAA effective July 27, 1987. The proposed NCP must be approved or disapproved on or before January 23, 1988. A Federal Register notice announcing the submission of the NCP for FAA approval was published July 27, 1987. The maps and proposed program have been coordinated with airport users, community officials, land use planning agencies, and the public. Documentation of this coordination is found in the appendices of the study report.

Earlier review of the proposed NCP by this office and APP-600 found the program to be compliant with the standards set forth in FAR Part 150, paragraph 150.23. This submittal requests formal FAA review and approval of the NCP for Port Columbus International Airport. The airport is situated in the eastern part of the city of Columbus, which is currently designated as a medium hub. It has 184 based aircraft and had approximately 230,000 operations in 1986. This Part 150 study was funded under AIP Grant 84-2-3-39-0025-03-85 with a Federal project share of \$267,188, which includes a master plan update.

This office believes the NCP complies with published standards for FAR Part 150 submittals. We have coordinated this report with Regional Counsel, the regional Planning Staff, and affected operational divisions. We are pleased to forward this candidate NCP for your consideration. We recommend you approve this NCP.

Bill Pollard
William H. Pollard

Attachment

2

Date:
Subject: FAR Part 150 Noise Compatibility Program, Record of Decision;
Port Columbus International Airport, Columbus, Ohio

Associate Administrator for Airports, ARP-1

Concur/Non-concur: Robert L. Dickson Date: 9/16/87

Associate Administrator for Policy and International Aviation, API-1

Concur/Non-concur: W. B. [Signature] Date: 9/18/87

Chief Counsel, AGC-1

Concur/Non-concur: Emily M. [Signature] Date: 9/21/87

Administrator, AOA-1

Approved/Disapproved: Adm. [Signature] Date: 9-25-87

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20826 - I14



City of Columbus
Mayor Dana G. Rinehart

Public Utilities and Aviation Department

MICHAEL D. LONG, Director

March 26, 1987

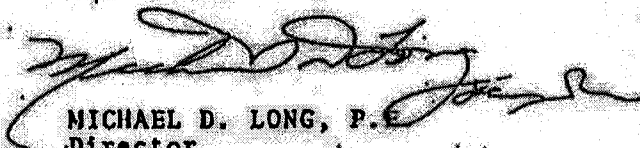
Mr. Bob Allen
FAA-ADO
Willow Run Airport-East Side
880 Deck Road
Boileville, Michigan 48111

Dear Mr. Allen:

With this letter, the City of Columbus offers Noise Exposure Map-1985 (1 of 2) and Noise Exposure Map-1990 (2 of 2), as presented in the Part 150 Noise Compatibility Program for Port Columbus International Airport (PCIA), as the official noise exposure maps to be accepted by the Federal Aviation Administration.

This letter also certifies that since the FAR 150 Noise Study, Noise Contour Maps for both base year (1985) and base year plus five (5) years (1990) have been prepared for PCIA under AIP Project Number 3-39-0025-03, there have been no significant changes in the following airport operational characteristics that would invalidate the proposed Noise Compatibility Program. A tabulation entitled "Summary INM Input Data for Noise Maps" is attached.

Sincerely,


MICHAEL D. LONG, P.E.
Director
Public Utilities and Aviation

MDL/DFN:sss
Enclosures

cc: Mr. David Shine
AGL-610

005

Director's Office

Mr. W. Frank "Frank" Allen
Telephone: (614) 462-2000
10/11/87

Airports Division

Mr. J. L. "Bud" Brown
Telephone: (614) 462-2000
10/11/87

Electricity Division

Mr. W. Frank "Frank" Allen
Telephone: (614) 462-2000
10/11/87

Sewerage & Drainage Division

Mr. J. L. "Bud" Brown
Telephone: (614) 462-2000
10/11/87

Water Division

Mr. J. L. "Bud" Brown
Telephone: (614) 462-2000
10/11/87

20826 - I15

PART ISO STUDY ORGANIZATION
PORT COLUMBUS INTERNATIONAL AIRPORT

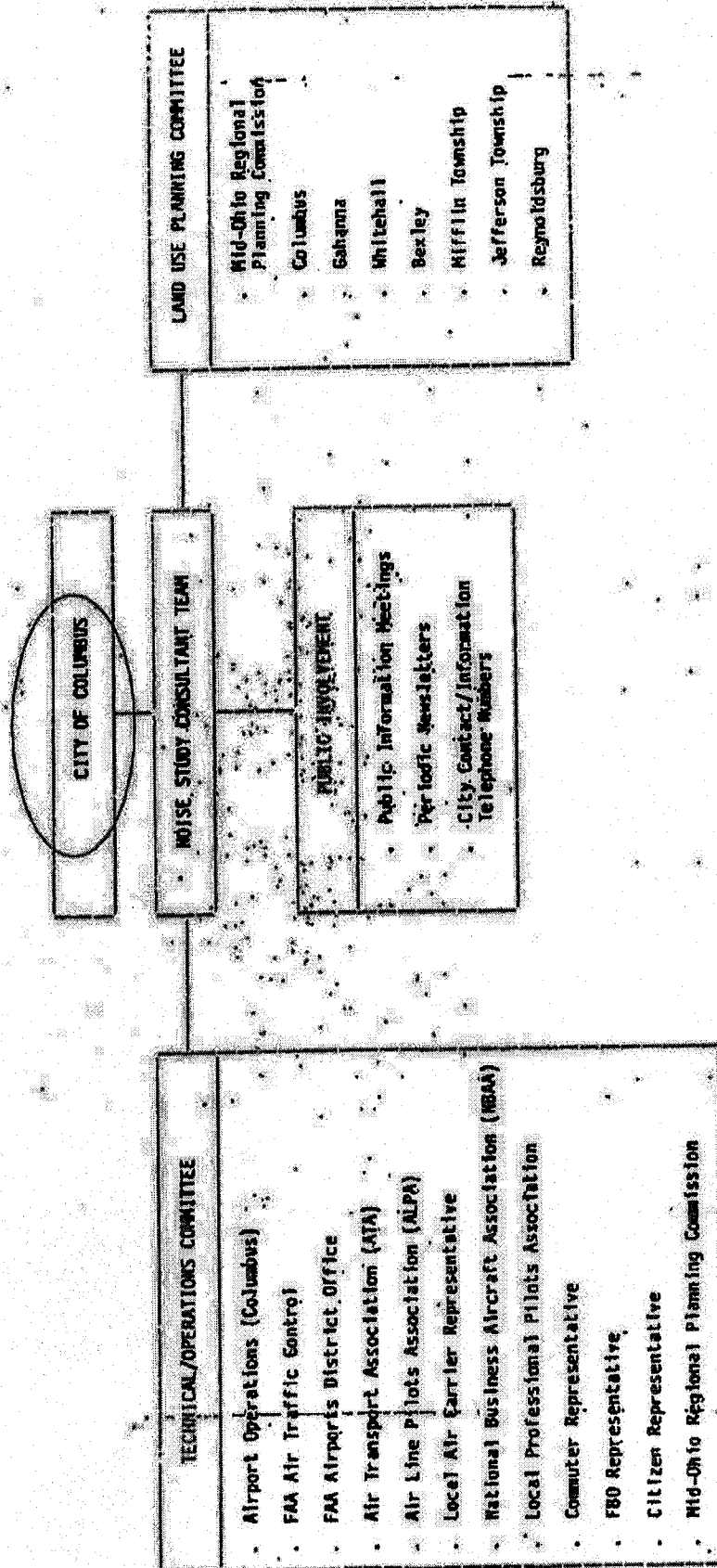
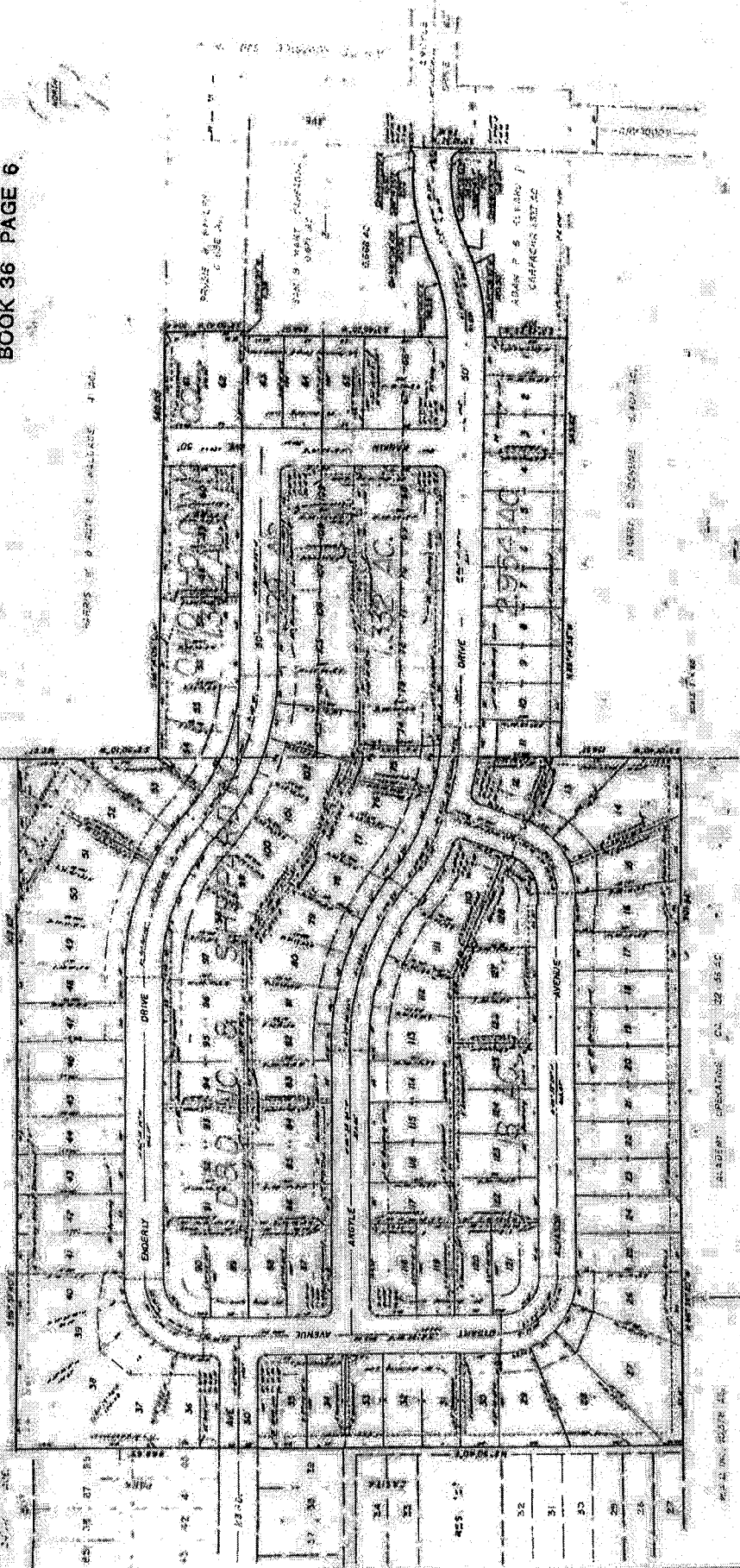


EXHIBIT I-1

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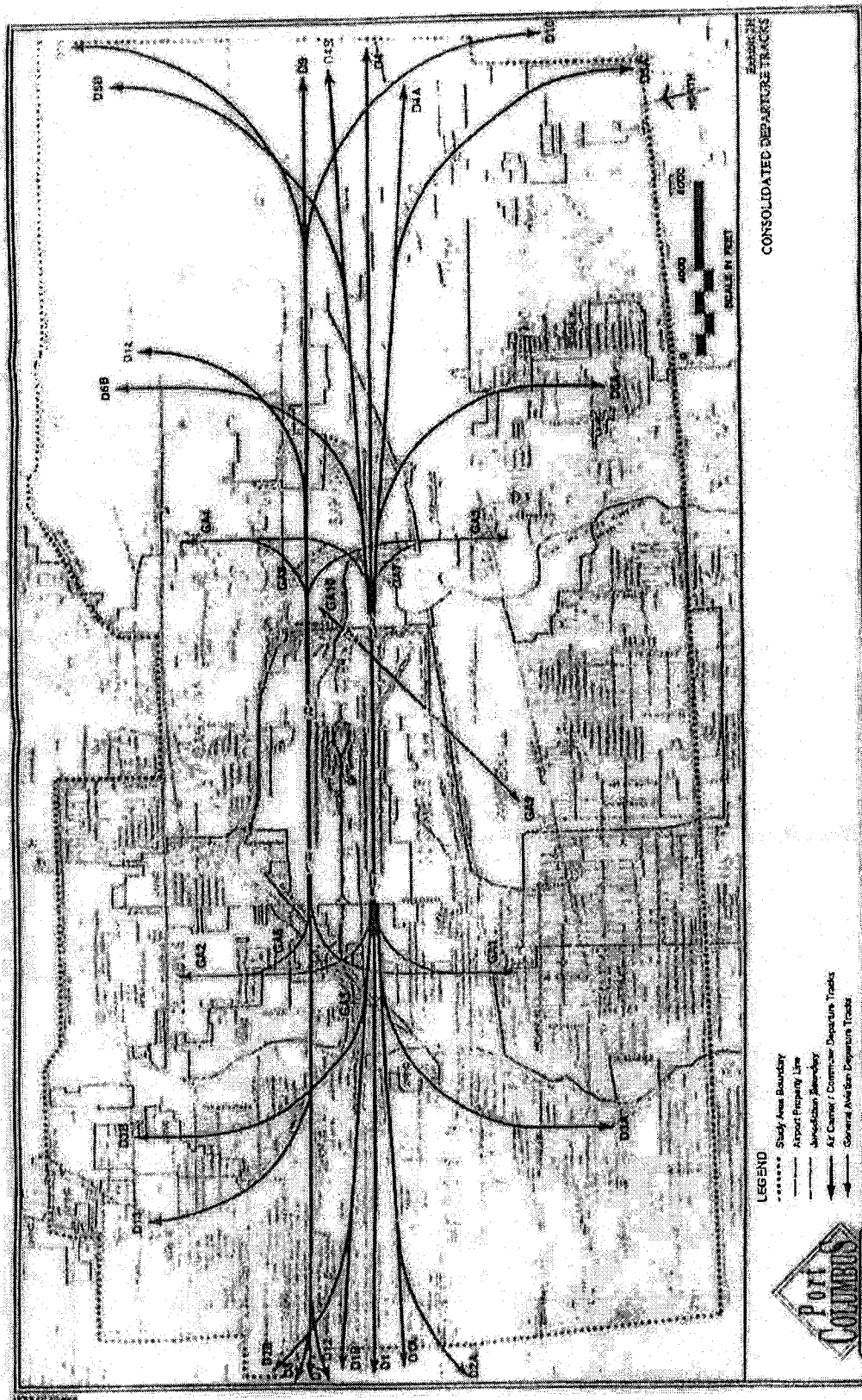
BOOK 36 PAGE 6



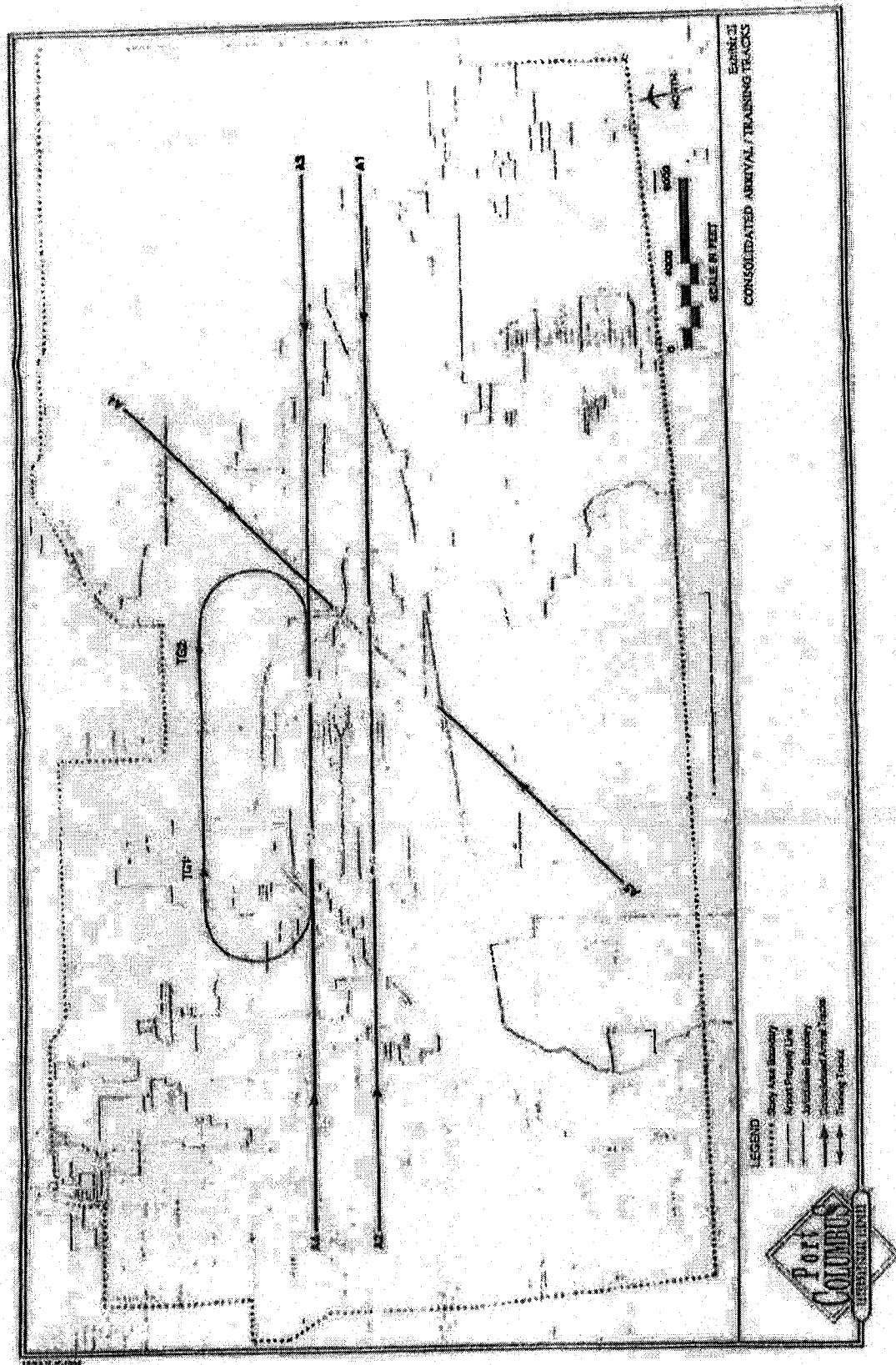
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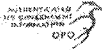


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Federal Register

Wednesday,
April 28, 2010

Part II

Environmental Protection Agency

40 CFR Part 87

Advance Notice of Proposed Rulemaking
on Lead Emissions From Piston-Engine
Aircraft Using Leaded Aviation Gasoline;
Proposed Rule

011

20318F14

ATTACHMENT B
Avigation Easement

137475

TIME 10:20A M
RECORDER FRANKLIN CO., OHIO

-- HOMEOWNER PARTICIPATION AGREEMENT
RESIDENTIAL SOUND INSULATION PROGRAM
Port Columbus International Airport

SEP 2 1992

RICHARD B. METCALF, RECORDER
RECORDER'S FEE 18⁰⁰

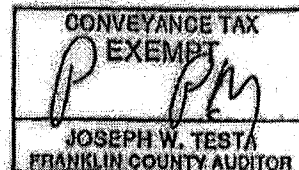
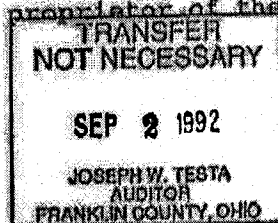
This easement is conveyed from YVONNE DECAROL WEBB.
hereinafter called "Grantor", to the Columbus Municipal Airport
Authority of Columbus, Ohio, hereinafter called the "Grantee".
This easement is entered into this 20th day of April,
1992.

Grantor is the owner of land and improvements thereto located at
1845 ALVASON AVE., COLUMBUS, of the State of Ohio, and
described as follows:

DESCRIPTION

Being Lot Number Seventeen (17) of Argyle Park Subdivision, as
the same is numbered and delineated upon the recorded plat
thereof, of record in Plat Book 36, page 6, Recorder's Office,
Franklin County, Ohio.

The Grantee is the proprietor of the Port Columbus International
Airport.



MAILED
ENVELOPE FURNISHED

012

Presidential Documents

Title 3—The President

EXECUTIVE ORDER 11738

Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.), particularly section 306 of that Act as added by the Clean Air Amendments of 1970 (Public Law 91-604), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), particularly section 508 of that Act as added by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500), it is hereby ordered as follows:

SECTION 1. Policy. It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act (hereinafter referred to as "the Air Act") and the Federal Water Pollution Control Act (hereinafter referred to as "the Water Act").

SEC. 2. Designation of Facilities. (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as "the Administrator") shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c)(1) of the Air Act or section 309(c) of the Water Act. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. Contracts, Grants, or Loans. (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in

THE PRESIDENT

whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. *Procurement, Grant, and Loan Regulations.* The Federal Procurement Regulations, the Armed Services Procurement Regulations, and, to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act, and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. *Rules and Regulations.* The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. *Cooperation and Assistance.* The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of his agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

SEC. 7. *Enforcement.* The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. *Exemptions—Reports to Congress.* (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted

THE PRESIDENT

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for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans; which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.


(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. *Related Actions.* The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

SEC. 10. *Applicability.* This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

SEC. 11. *Uniformity.* Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971, and section 306 of the Air Act.

SEC. 12. *Order Superseded.* Executive Order No. 11602 of June 29, 1971, is hereby superseded.



THE WHITE HOUSE,
September 10, 1973.

[FR Doc.73-19498 Filed 9-10-73; 4:35 pm]

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64693E02

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION

MOTION

SIDNEY LEWIS et al.

: Case No. 98CVC05-3445

Plaintiffs

: JUDGE ALAN C. TRAVIS

v.

:

CITY OF COLUMBUS

:

Defendant.

:

**MOTION OF DEFENDANT CITY OF COLUMBUS
TO DISMISS FOR FAILURE TO STATE A CLAIM, OR, IN THE ALTERNATIVE,
FOR MORE DEFINITE STATEMENT AND TO STRIKE**

Now comes Defendant City of Columbus, by and through its counsel, City Attorney Janet Jackson and hereby moves the court, pursuant to Civ. R. 12(B)(6), to dismiss all claims set forth in Plaintiffs' complaint for failure to state a claim upon which relief can be granted, or in the alternative, pursuant to Civ. R. 12(E) and 12(F), for a definite statement and to strike. Defendant relies on the following memorandum in support of its motion.

Respectfully submitted,

CITY OF COLUMBUS DEPARTMENT OF LAW
JANET E. JACKSON, CITY ATTORNEY

Cheryl Roberto
Elizabeth C. Burke (0064838) APPR

Cheryl Roberto (0039036) APPR

Assistant City Attorneys

90 West Broad Street, Room 200

Columbus, Ohio 43215

Attorneys for Defendant

(614) 645-7385

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MEMORANDUM IN SUPPORT

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I. FACTS

On May 4, 1998, three individuals and a neighborhood civic association initiated the above-captioned *pro se* action against the City of Columbus. The complaint alleges that from 1993 through 1998 the City "intentionally conspired to devalue the real estate of the plaintiffs by taking of lands around plaintiffs property to enclose them in an industrial area where their health, property values, and community values" will be destroyed. Plaintiffs assert that this action constitutes a violation of the United States Constitution's guarantees of equal protection and due process, as well as a civil rights violation. Plaintiffs assert that this Court has jurisdiction over this matter pursuant to R.C. § 163.09(c), which relates to the valuation of property which has been appropriated by a public agency, and R.C. § 5543.13, which relates to compensation to owners of real property which is damaged by the county engineer.

The caption of the complaint references R.C. §163.56, which relates to relocation assistance for persons displaced by the appropriation of real property by a public agency, 42 U.S.C. §§ 1983, 1985, 1986 and 1988, Civ. R. 4, the United States Constitution, 14th Amendment, and the Ohio Constitution. Plaintiffs attached to their complaint a two-page "Memorandum in Support," five affidavits, a copy of the cover page to City Council Ordinance Number 1533-93, and copies of portions of the United States Code Annotated.

II. LAW AND ARGUMENT

- A. *Plaintiffs' complaint must be dismissed for failure to state a claim as they can prove no set of facts entitling them to recovery against the City.*

The City moves this Court to dismiss Plaintiffs' action for failure to state a claim. When considering a motion brought under Civ. R. 12(B)(6), the court, as a matter of law, must accept

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all of the allegations stated in the complaint as true. To grant such a motion, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. *Greeley v. Miami Valley Maintenance Contrs., Inc.* (1990), 49 Ohio St.3d 228, 551 N.E.2d 981.

Although Plaintiffs list numerous causes of action under multiple theories based upon both the Ohio and U.S. Constitutions and sections of both the Ohio Revised Code and the United States Code, Plaintiffs have alleged a single fact: the City "intentionally conspired to devalue the real estate of the plaintiffs by taking of lands around plaintiffs property to enclose them in an industrial area where their health, property values, and community values" will be destroyed. As best as the City is able to ascertain, Plaintiffs appear to aver that by assuming ownership of land in proximity to Plaintiffs, the City has damaged the value of Plaintiffs' real property. Thus, the essence of Plaintiffs' complaint is an allegation of a *de facto* taking by the City in violation of constitutional principles and codified appropriation processes.

Plaintiffs' complaint must fail in that the facts, even if assumed to be true, do not constitute a taking. Whether property has been taken for a public use so as to require just compensation is determined by the character of the invasion, not by the amount of damage suffered. Damage or loss by itself does not create a taking. *Woodland Market Realty Company v. City of Cleveland*, 426 F.2d 955, 958 (6th Cir. 1970). There is no *de facto* taking of properties which have decreased in value unless there is a physical invasion, damage or injury, or a restraint of some type, or action by the City to appropriate such properties. *Sayre v. City of Cleveland*, 493 F.2d 64, 70 (6th Cir. 1974), *cert. den.* 419 U.S. 837, 95 S.Ct. 65, 42 L.Ed.2d 64. Actions done in the proper exercise of governmental powers which do not directly encroach upon private property, though they may impair its use or value, do not

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amount to a taking of such property within the meaning of the constitutional provision that private property shall not be taken for public use without just compensation. *Woodland Market*, 426 F. 2d at 958. Diminution of value is not itself a taking. *State, ex rel. Taylor v. Whitehead* (1982), 70 Ohio St.2d 37, 434 N.E.2d 732. The fact that property is rendered less desirable as a result of governmental activity does not in and of itself constitute a taking so as to entitle the owners to compensation. *McKee v. City of Akron* (1964), 176 Ohio St. 282, 199 N.E.2d 592, *overruled on other grounds by Haverlack v. Portage Homes, Inc.* (1982), 2 Ohio St. 3d 26, 442 N.E.2d 749. Alteration of the character of a neighborhood is not a taking. *Woodland Market*, 426 F. 2d at 958.

Assuming, but not conceding as true that the City's ownership of property in Plaintiffs' neighborhood caused the value of the Plaintiffs' real property to diminish, such diminished value does not constitute a taking and therefore, Plaintiffs fail to state a claim on that basis. Since the foundation of Plaintiffs' constitutional and statutory claims is a taking, all of their derivative allegations must also fail for failure to state a claim.

B. *Plaintiffs' complaint is so vague or ambiguous that the City cannot reasonably be required to frame a responsive pleading. Additionally, it contains insufficient claims, redundant, immaterial, impertinent or scandalous matter which should be stricken.*

As stated above, as best as the City is able to ascertain, Plaintiffs have attempted to state a claim based on a *de facto* taking. Should the Court determine Plaintiffs' complaint states something other than or in addition to that addressed, Defendant alternatively moves the Court for a more definite statement and to strike nonconforming portions of Plaintiffs' pleading.

The Ohio Civil Rules require "notice pleading." Plaintiffs are required to make a short plain statement of their claim showing that they are entitled to relief. Civ. R.

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8(A)(1). Each averment of the pleading shall be simple concise, and direct. Civ. R. 8(E).

All averments of claim shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances.

Civ. R. 10(B). "Notice pleading" under Civ.R. 8(A) and 8(E) requires that a claim concisely set forth only those operative facts sufficient to give "fair notice of the nature of the action." *Columbia Gas of Ohio, Inc. v. Robinson*, 81 OMisc.2d 15, 673 N.E.2d 701 (Ohio Mun. 1995).

If a pleading fails to provide fair notice, a defendant may move for relief in the form of an order for a definite statement or to strike insufficient or immaterial matter.

Rule 12(E) of the Rules of Civil Procedure provides that:

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a definite statement before interposing his responsive pleading.

Civ. R. 12(F) provides that the court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent or scandalous matter.

Plaintiffs' complaint asserts a single fact to support a list of alleged violations. The attachments to the complaint contain a disassociated narrative of perceived wrongs with the only apparent common thread being the allegation of a City action transpiring in north east Columbus. Plaintiffs' filing is simply too vague or ambiguous for the City of Columbus reasonably to decipher. Defendant respectfully requests that the attachments to the complaint be stricken as an insufficient claim and immaterial and that Plaintiffs be directed to file a complaint which contains a concise statement of their claims in numbered paragraphs and which provides fair notice to the City of such claim(s).

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III. CONCLUSION

For the foregoing reasons, the City of Columbus requests that this Court dismiss Plaintiffs' complaint with prejudice for failure to state a claim for which relief can be granted pursuant to Civ. R. 12(B)(6). Alternatively, the City of Columbus requests that this Court strike nonconforming portions of Plaintiffs' pleading and order Plaintiffs to file a more definite statement of their claims.

Respectfully submitted,

CITY OF COLUMBUS DEPARTMENT OF LAW
JANET E. JACKSON, CITY ATTORNEY

Cheryl Roberto

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Assistant City Attorneys
90 West Broad Street, Room 200
Columbus, Ohio 43215
Attorneys for Defendant
(614) 645-7385

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CLERK
JANET E. JACKSON

CERTIFICATE OF SERVICE

This will certify that a copy of the foregoing Motion of Defendant City of Columbus for **64693E08**
More Definite Statement and to Strike or, in the Alternative, To Dismiss for Failure to State a
Claim was sent by regular U.S. Mail, postage prepaid, this 28th day of May, 1998, to the
following:

Mr. Sidney Lewis
1875 Alvason Avenue
Columbus, Ohio 43219

Mr. James Brawham
1905 Woodland Avenue
Columbus, Ohio 43219

Mr. Carl Walker
1704 E. 24th Avenue
Columbus, Ohio 43219

Ms. Betty L. Peele
The Argyle Park Civic Association
1704 E. 24th Avenue
Columbus, Ohio 43219

Cheryl Roberto
Cheryl Roberto
Assistant City Attorney

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